

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1737/2015

M.Laxmi

.. Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, Office of the Commissioner of
Police (Goondas Section)
Egmore, Chennai-8.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 29.01.2015 in memo No.51/BDFGISSSV/2015, against the petitioner's son Prakashraj, son of Manohar, aged about 25 years who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
For respondents : Mr.M.Maharaja, APP

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in BCDFGISSSV No.51/2015 dated 29.01.2015, whereby the detenu herein, viz., Prakashraj, son of Manohar, aged about 25 years, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the 2 to 4 adverse cases [Cr.Nos.1324/2015, 1562/2015 and 1733/2015] and in the ground case [Cr.No.1938/2015] registered by H8 Thiruvottiur Police Station and the bail applications filed by him in the ground case as well as in the 2 to 4 adverse cases before the learned Judicial Magistrate, Thiruvottiur in CrI.MP.Nos.141/2015, 140/2015 and 139/2015, were pending as on the date of the passing of the detention order. Though a reference was made by the detaining authority about the remand of the detenu in the ground case, he has not stated whether the detenu has filed any bail application in the said case or whether he has been granted bail in that case. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

4. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. We have heard the learned counsel for both sides with regard to the facts and citation.

6. As could be evidenced from paragraph 4 of the Grounds of Detention placed before us, the detenu was arrested in the 2 to 4 adverse cases [Cr.Nos.1324/2015, 1562/2015 and 1733/2015] and in the ground case [Cr.No.1938/2015] registered by H8 Thorivottiur Police Station. Subsequent bail applications filed by the detenu in the 2 to 4 adverse cases [Cr.Nos.1324/2015, 1562/2015 and 1733/2015] were pending on the file of the learned Judicial Magistrate, Thiruvottiur in CrI.MP.Nos.141/2015, 140/2015 and 139/2015. Though the factum of arrest and remand of the detenu in the ground case was mentioned by the detaining authority in paragraph 4, it has not been stated by him as to whether the detenu has filed any bail application in the said case or whether the detenu has been granted bail. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

7. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not

punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

8. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2. The Commissioner of Police,
Chennai Police, Office of the Commissioner of
Police (Goondas Section)
Egmore, Chennai-8.

3. The Superintendent of Central Prison
Puzhal, Chennai.

4. The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai-9

5. The Public Prosecutor,
High Court, Madras.

vsn(co)
pmk.23.9.2015

H.C.P.No.1737/2015